

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

STEPHEN ZOURAS, LLP, :

Plaintiff : **CIVIL ACTION NO. 3:20-2357**

v. : **(MANNION, D.J.)**
(CARLSON, M.J.)
THOMAS MORE MARRONE, et :
al.,
Defendants :

O R D E R

Pending before the court is the July 15, 2022 report of Magistrate Judge Martin C. Carlson, (Doc. 60), which recommends that the court grant the Marrone law firm defendants' motion to amend their amended answer to the plaintiff's complaint in order to dismiss "with prejudice" one of their affirmative defenses, namely a set-off claim alleging that the plaintiff "Stephan Zouras's damages, if any, are barred, in whole or in part, by the doctrine of set-off." (Doc. 54). The report also contains a caveat with respect to its recommendation, namely, that if the Marrone defendants are permitted to withdraw their stated affirmative defense, and this leads to the filing of multiplicitous set-off claims by the Marrone defendants in other forums, then

the court should reserve the right to reconsider this ruling at the request of the plaintiff Zouras firm.

To date neither the plaintiff nor the defendants have filed any objections to the report and the time within which they were due has expired. Upon review, the report of Judge Carlson will be adopted in its entirety.

Even when no objections are filed to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed.R.Civ.P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Further, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.¹

¹Since the report details the complete background of this case, the court does not repeat it herein. Also, since this court was reassigned the underlying case of Smiley v. E.I. Du Pont De Nemours and Co., Civil No. 3:12-CV-2380, M.D. Pa., after Judge Munley passed away, it is fully aware of the facts, including the fact that the attorney parties in the instant case were co-counsel for the successful plaintiff class in Smiley.

Also, since the report states the correct legal standards as well as the correct case law regarding the analysis of the defendants' motion under Rule 15(a) and Rule 1, they will not be repeated herein.

The report provides a thorough analysis regarding the defendants' instant motion and it shall not be repeated herein.

In short, the court has reviewed the submissions of the parties regarding the defendants' motion as well as the report and finds that the relevant issues were thoroughly addressed by Judge Carlson in his report. The court also finds no clear error of record with regard to Judge Carlson's findings. Moreover, the court agrees with the sound reasoning that led Judge Carlson to the conclusions in his report. As such, the court will adopt the report of Judge Carlson, as the decision of the court.

In light of the foregoing, **IT IS HEREBY ORDERED THAT:**

- (1)** The report and recommendation of Judge Carlson, (**Doc. 60**), is **ADOPTED in its entirety**, as the ruling of the court.
- (2)** The Marrone defendants' motion to amend their amended answer to the plaintiff's complaint to dismiss the affirmative defense of set-off with prejudice, (**Doc. 54**), is **GRANTED**, and the defendants' affirmative defense alleging that: "Stephan Zouras's damages, if any, are barred, in whole or in part, by the doctrine of set-off", (**Doc. 14 at 23**, Affirmative Defense Number 38), is **DISMISSED WITH PREJUDICE**.

- (3) In the event that the granting of the Marrone defendants' stated motion, (Doc. 54), and the dismissal of their stated set-off affirmative defense leads to the filing of multiplicitous set-off claims by the Marrone defendants in other forums, the court reserves the right to reconsider its ruling at the request of the plaintiff Zouras firm.
- (4) The clerk of court is directed to **REMAND** this case to Judge Carlson for further proceedings.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: August 16, 2022

20-2357-03